

1 THE HONORABLE RICARDO S. MARTINEZ
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8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
9 IN AND FOR THE COUNTY OF KING

10 SENIOR HOUSING ASSISTANCE GROUP,

No. 2:17-cv-01115-RSM

11 Plaintiff/Counter-
12 Defendant,

v.

13 AMTAX HOLDINGS 260, LLC, et al.

14 Defendants/Counter-
15 Plaintiffs.
16
17
18
**DECLARATION OF JAKE EWART
IN SUPPORT OF SENIOR HOUSING
ASSISTANCE GROUP'S AND
SENIOR HOUSING ASSISTANCE
CORPORATION'S RESPONSE TO
AMTAX HOLDINGS 260, LLC'S
MOTION FOR SUMMARY
JUDGMENT**

19 AMTAX HOLDINGS 260, LLC, et al.,

20 Third-Party Plaintiffs,

v.

21 SENIOR HOUSING ASSISTANCE
22 CORPORATION, et al.

23
24 Third-Party Defendants.

25 Pursuant to 28 U.S.C. § 1746, the undersigned hereby declares that:

26 1. I am an attorney with the firm of Hillis Clark Martin & Peterson P.S., which
27 represents Plaintiff Senior Housing Assistance Group and Third-Party Defendant Senior

1 Housing Assistance Corporation in this action. I have personal knowledge of the matters set
2 forth in this declaration and am competent to testify in this matter.

3 2. Attached as **Exhibit A** are true and correct copies of deposition excerpts of the
4 Deposition of Stephen Smith taken on July 18, 2018.

5 3. Attached as **Exhibit B** are true and correct copies of deposition excerpts of the
6 Deposition of David Von Tilius taken on October 10, 2018.

7 I hereby declare, under penalty of perjury under the laws of the United States of
8 America, that the foregoing is true and correct.

9 DATED this 14th day of December 2018, at Seattle, Washington.
10

11 *s/Jake Ewart*
12 JAKE EWART

13 ND: 21822.003 4826-8072-5378v3
14

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of December, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to all counsel of record.

DATED this 14th day of December 2018, at Seattle, Washington.

By s/ Jake Ewart
Jake Ewart, WSBA #38655
Hillis Clark Martin & Peterson P.S.
999 Third Avenue, Suite 4600
Seattle, Washington 98104
Telephone: (206) 623-1745
Facsimile: (206) 623-7789
Email: jake.ewart@hcmp.com

EXHIBIT A

Stephen Smith

July 18, 2018

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SENIOR HOUSING ASSISTANCE) No.
GROUP,) 2:17-cv-01115-RSM
Plaintiff/)
)
Counter-Defendant,)
vs.)
AMTAX HOLDINGS 260, LLC, et)
al.,)
)
Defendants/Counter-)
Plaintiffs.)
)

AMTAX HOLDINGS 260, LLC, et)
al.,)
)
Third-Party)
Plaintiffs)
vs.)
SENIOR HOUSING ASSISTANCE)
CORPORATION, et al.,)
Third-Party)
Defendants.)
)

Videotaped

Deposition Upon Oral Examination Of

STEPHEN SMITH

July 18, 2018

1201 Third Avenue, Suite 4900, Seattle, Washington

REPORTED BY: PEGGY FRITSCHY HAMILTON, RPR, CSR, CLR,
29906/No. 2704

Stephen Smith

July 18, 2018

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1 dinner?

2 A. Or we go to a baseball game or a Seahawks
3 game, a Mariners or Seahawks game. As far as dinner,
4 a few times a year.

11:24:57 5 Q. Okay. And I mean, would you consider Bryan a
6 friend of yours?

7 A. Yes.

8 Q. Okay. And a business partner?

9 A. Yes.

11:25:04 10 Q. Okay. Do your families ever interact? Do
11 you ever --

12 A. Yes. We had dinner with our wives one time,
13 the four of us.

14 Q. Okay. Do you recall approximately when that
11:25:17 15 was?

16 A. A couple -- a year or two ago, yeah.

17 Q. Okay. And was there a special occasion for
18 that, or was it just sort of an idea that it would be
19 nice to all have dinner together?

11:25:39 20 A. Just an idea that it would be nice.

21 Q. I'm going to hand you another exhibit, No. 9.

22 (Exhibit-9 marked..)

23 Q. So Mr. Smith, the court reporter has handed
24 you what's been marked as Exhibit-9. Do you recognize
11:26:20 25 this document? Take your time to take a look at it.

Stephen Smith

July 18, 2018

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1 A. I can't say that I recognize it, but
2 obviously I signed it.

3 Q. Well, that was going to be my next question.

4 A. Yeah.

11:26:44 5 Q. So if you turn to the -- let's see. If you
6 look at those numbers that I mentioned before, those
7 Bates numbers in the bottom corner. If you look at
8 the one that ends in 547, is that your signature on
9 that page?

11:27:02 10 A. Yes.

11 Q. Okay. And it's dated December 18th, 2014?

12 A. Yes.

13 Q. Okay. And if you go back to the first
14 page of this document, it appears to be a real estate
11:27:15 15 purchase and sale agreement between Meridian Court
16 Apartments Limited Partnership and
17 SSRE Development, LLC. Do you see that right in the
18 preamble?

19 A. I do.

11:27:28 20 Q. Okay. And so do you understand that this was
21 an offer by SSRE to purchase the Meridian Court
22 Apartments from the limited partnership?

23 A. Yes.

24 Q. Okay. When did you first become aware of the
11:27:45 25 existence of the Meridian Court Apartments?

Stephen Smith

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1 you'll have an offer -- a purchase and sale agreement
2 that includes an offer, that if accepted, will become
3 binding?

4 A. I'm sorry. Could you repeat that?

11:38:55 5 Q. Sure. Well, let me back up. Let's stick
6 with the date. Is it typically your practice to put
7 an expiration date on offers that you make to purchase
8 real estate?

9 A. Yes.

11:39:10 10 Q. Okay. And usually how long of a period do
11 you sort of let the offer stay open before it is
12 withdrawn?

13 A. Two to four weeks.

14 Q. Okay. And you can't think of any reason,
11:39:33 15 other than the relationship to December 18th, which
16 is, I guess, 13 days before December 31st, 2014, you
17 can't think of any other reason why December 31st,
18 2014, was selected as the date the offer would expire?

19 A. That's correct.

11:39:49 20 Q. And did you -- now, going back to what I was
21 inarticulately trying to get to before.

22 A. Um-hum.

23 Q. Was it your understanding that if the seller
24 signed this agreement, that you would have a binding
11:40:07 25 purchase and sale agreement that you would be

Stephen Smith

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1 contractually bound by?

2 A. Yes.

3 Q. Okay. And in your business, where you are
4 interested in purchasing a piece of real property, is
11:40:27 5 it typical for you to do it in this manner, to send
6 the seller a real estate purchase and sale agreement,
7 that if they sign it, then it's a consummated deal?

8 Is that normally how you do things?

9 A. Isn't that obvious? I mean, of course.

11:40:45 10 Q. Well, I mean, have you ever heard of the term
11 "letter of intent"?

12 A. Oh, I see. Right, of course, yes. Yes, I
13 have heard of letter of intent, and yes, it was -- yes
14 to your first question. It was my understanding that
11:40:59 15 we would have a legally binding contract if the seller
16 signed. Is that what you asked me?

17 Q. Well, my question was, in your general
18 practice, putting this aside --

19 A. Okay.

11:41:09 20 Q. -- in your general practice, when you are
21 interested in buying a property, do you -- is the
22 first thing that you send to the seller a purchase and
23 sale agreement, where if they sign it, it's a deal, or
24 do you kind of --

11:41:19 25 A. Yes. I don't like letters of intent because

Stephen Smith

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1 Q. That's your assistant?

2 A. Yes.

3 Q. Okay. And does she still work with you?

4 A. Yes.

12:00:48 5 Q. How long has she been with you?

6 A. About eight years.

7 Q. Oh. Great. Before we get to the emails,
8 there's an attachment. You see at the top there that
9 shows an attachment, and Diane's email says, "Steve
12:01:15 10 and Bryan, attached is the signed purchase offer." So
11 I'd like to look at that attachment first, which is
12 the third page of the exhibit, Bates number ending in
13 714.

14 This appears to be a purchase and sale
12:01:29 15 agreement, dated as of December 23rd, 2015, between
16 Auburn North Associates Limited Partnership and SSRE
17 Development. Do you see that?

18 A. Yes.

19 Q. Okay. And if you look to page 14 of this
12:01:46 20 agreement, which is Bates number ending in 727, I'd
21 just like you to confirm again that that's your
22 signature there.

23 A. Yes.

24 Q. And the signature date on that is
12:01:58 25 December 29th, 2015?

Stephen Smith

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1 makes a counteroffer to this agreement, provided that
2 such mutual acceptance or counteroffers delivered by
3 seller to buyer on or before 5 p.m. on January 8th,
4 2016." Do you see that?

12:11:43 5 A. Yes.

6 Q. So again, similar to Meridian Court, your
7 understanding was that if Auburn North Limited
8 Partnership signed this, then you would have a binding
9 deal to purchase the property?

12:11:59 10 A. Yes.

11 Q. And do you recall whether you made a
12 determination prior to submitting this offer that you
13 had the capacity to perform the obligations set forth
14 in this offer?

12:12:32 15 A. Well, that would have been step two after
16 mutual acceptance, is putting all of the partners
17 together to buy it.

18 Q. I'm not sure I understand what you mean.

19 A. I'm sorry. What was your question?

12:12:49 20 Q. Well, my question is, did you have
21 \$21 million to buy this property?

22 A. No.

23 Q. Okay. And so what was the process that you
24 were describing just now as step two?

12:13:04 25 A. Getting partners and putting together a

Stephen Smith

July 18, 2018

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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, the undersigned Registered Professional Reporter and Washington Certified Court Reporter, hereby certify that the foregoing deposition upon oral examination of STEPHEN SMITH was taken before me on July 18, 2018 and transcribed under my direction;

That the witness was duly sworn by me pursuant to RCW 5.28.010 to testify truthfully; that the transcript of the deposition is a full, true, and correct transcript to the best of my ability; that I am neither attorney for, nor a relative or employee of, any of the parties to the action or any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this date: July 23, 2018.

\S\ PEGGY FRITSCHY HAMILTON, RPR, CSR, CLR

Court Reporter in and for the State of Washington, residing at Seattle. License expires 07-02-19.

EXHIBIT B

David Von Tilius

October 10, 2018

Page 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SENIOR HOUSING ASSISTANCE GROUP,)
Plaintiff-Counter-)
Defendant,) NO.
vs.)
AMTAX HOLDINGS 260, LLC, et al.,) 2:17-cv-01115 RSM
Defendants/Counter-)
Plaintiffs.)
-----)
AMTAX HOLDINGS 260, LLC, et al.,)
Third-Party Plaintiffs,)
vs.)
SENIOR HOUSING ASSISTANCE)
CORPORATION, et al.)
Third-Party Defendants.)

DEPOSITION UPON ORAL EXAMINATION

OF

DAVID VON TILIUS

9:05 a.m.

October 10, 2018

701 Fifth Avenue, Suite 3300
Seattle, Washington

REPORTED BY: Lauren G. Harty, RPR, CCR #2674

David Von Tilius

October 10, 2018

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<p>1 forth, are any of them specifically addressing Section 2 42?</p> <p>3 A. You'll have to give me a minute to -- 4 Q. Please take -- 5 A. -- look through this. 6 Q. Take whatever time you need. 7 A. Thank you.</p> <p>8 I do not believe that any of the authorities 9 referenced in the portion of the report you just 10 referred to specifically relate to Section 42 as it 11 relates to the impact of a below-market rate option. 12 Q. Okay.</p> <p>13 Are you familiar with a Massachusetts case 14 called Homeowners Equity?</p> <p>15 A. I am. 16 Q. Okay.</p> <p>17 And does that, at least to some degree, deal 18 with the option issue that is within this -- under 19 this heading?</p> <p>20 A. I think that it does. 21 Q. Is there -- do you refer at all in your 22 report to the Homeowners Equity case? 23 A. I do not believe that I do, no. 24 Q. Any particular reason you did not? 25 A. I don't know if there's a particular reason.</p>	<p>1 A. It was representing the limited partner in 2 that case as well. 3 Q. And were the -- was it one or more than one 4 limited partner in that case, as you understand it? 5 A. I believe it was one limited partner and one 6 special limited partner. 7 Q. And was that -- and were they AMTAX 8 entities? 9 A. They were not. 10 Q. Okay. 11 What -- does -- was AMTAX -- were any of the 12 parties AMTAX entities? 13 A. They were not. 14 Q. But they were entities that Alden Torch 15 would the correct term be represents? 16 A. They were funds managed by Alden Torch. 17 Q. Have you had any personal involvement in the 18 litigation that led up to the Homeowners Equity 19 decision? 20 A. I did not. 21 Q. Is it your understanding that the -- that 22 the decision was a decision by the highest court in 23 the state of Massachusetts? 24 A. That is my understanding. 25 Q. Could you please re -- switch for a second</p>
Page 67	Page 69
<p>1 I don't specifically agree with the ruling, not that 2 it's my determination to make. 3 Q. So you -- you think Homeowners Equity was 4 wrongly decided?</p> <p>5 MR. PETTIT: Objection; lacks foundation, 6 outside the scope of his designation. 7 A. I don't agree with it. 8 Q. (By Mr. Walters) Would you agree that 9 Homeowners Equity does specifically address Section 10 42? 11 A. I would. I also think that case 12 specifically does say that there is a difference 13 between a ROFR and an option and concludes that a ROFR 14 does require an offer in order to be triggered. 15 Q. Why do you disagree with the Homeowners 16 Equity decision? 17 A. I think -- for all the reasons that I've 18 laid out in here, I think that there is substantial 19 history to the contrary. 20 Q. Now, in the Homeowners Equity case is it 21 correct to say that your employer was directly 22 involved? 23 A. I think that is a correct statement, yes. 24 Q. Okay. 25 And in what way was it involved?</p>	<p>1 to Exhibit 181, please. 2 A. Sure. Where specifically? 3 Q. Page 8 of Mr. Krabbenschmidt's report, 4 please. Just tell me when you have that in front of 5 you. 6 A. I've got it. 7 MR. PETTIT: Page 8 you said Denny? 8 MR. WALTERS: 8. 9 MR. PETTIT: Thank you. 10 Q. (By Mr. Walters) Under the heading "Global 11 Indemnity Agreement," the second paragraph, where it 12 starts, "As discussed above...," do you see where I'm 13 referring? 14 A. I do. 15 Q. And specifically I want to direct your 16 attention to where about two-thirds of the way down 17 Mr. Krabbenschmidt refers to the carve-out provided by 18 IRC Section 42(i)(7). Do you see that? 19 A. I do. 20 Q. Okay. 21 First of all, let me have you read that 22 entire paragraph -- take whatever time you need -- and 23 tell me if you agree with what Mr. Krabbenschmidt says 24 here or if you have any disagreement with him. 25 MR. WALTERS: So we can go off the record.</p>

18 (Pages 66 to 69)

David Von Tilius

October 10, 2018

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1 S I G N A T U R E

2

3 I declare under penalty of perjury under the
4 laws of the State of Washington that I have read my
5 within deposition, and the same is true and accurate,
6 save and except for changes and/or corrections, if
7 any, as indicated by me on the CHANGE SHEET flyleaf
8 page hereof.

9 Signed in Denver, ^{Colorado} Washington, this
10 12th day of November, 2018.

11

12

13



14

DAVID VON TILIUS

15

Taken: October 10, 2018

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21

22

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24 Re: SHAG v. AMTAX, et al.
Cause No.: 2:17-cv-01115 RSM
25 Lauren G. Harty, RPR, CCR #2674

David Von Tilius

October 10, 2018

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1 SEATTLE DEPOSITION REPORTERS, LLC
 2 600 University Street, Suite 320
 3 Seattle, Washington 98101
 4 206.622.6661

5 C H A N G E S H E E T

6 PLEASE MAKE ALL CHANGES OR CORRECTIONS ON THIS SHEET,
 SHOWING PAGE, LINE AND REASON.

PAGE	LINE	CORRECTION AND REASON
13	17	Delete "and" - typo
13	21	Change "Could" to "would" - typo
22	20	Change "Resnick" to "Reznick" - typo
38	24	Change "and act and" to "enacted" - typo
41	14-15	change "with disregard to any of the" to "are disregarded entities for" - typo
43	17	Change "seceding" to "succeeding" - typo
44	12	Change "seceding" to "succeeding" - typo
48	19	Change "is" to "as" - typo
56	10	Change "Hunter" to "Hunt" - typo
78	11	Change "ex." to "exit" - typo
90	11	Change "PNC" to "PNCC" - typo
103	15	Change "remain to" "retain" - typo
151	20	Change "PNC" to "PNCC" - typo

DAVID VON TILIUS
 Taken: October 10, 2018

25 Re: SHAG v. AMTAX, et al.